

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAY SCHMIDT,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 243775
Lenawee Circuit Court
LC No. 01-009249-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted from a circuit court order denying his request for transcripts pursuant to MCR 6.433(B). We affirm.

Defendant pleaded guilty to prison escape, MCL 750.193, and was sentenced in May 2001 to a prison term of two to five years. Six months later, defendant filed a request for transcripts and other documents under MCR 6.433(B) for the purpose of "seeking pro per review" of his conviction and sentence. The trial court considered the motion under MCR 6.433(C). It ordered the clerk to provide defendant with various documents but denied the request for transcripts, finding that defendant had failed to establish good cause. MCR 6.433(C)(3).

The construction and interpretation of court rules presents a question of law that is reviewed de novo on appeal. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003).

Although defendant did not have an appeal as of right because he pleaded guilty, MCR 6.425(E)(2), and did not file a timely application for leave to appeal under MCR 7.205(A), he was entitled to file a delayed application for leave to appeal until May 2002 at the earliest. MCR 7.205(F). Because defendant was still entitled to seek leave to appeal at the time he submitted his request, he was entitled to the preparation of transcripts without first establishing good cause. MCR 6.433(B)(3); 5A Saltzman & Deming, Michigan Court Rules Practice, Rule 6.433, p 688.

Although the trial court erred in denying defendant's request for transcripts, we are unable to grant defendant relief. Defendant could not seek appellate review of his conviction without first filing a motion to withdraw his plea in the trial court, MCR 6.311(C), and could not appeal his sentence, which was within the guidelines, unless he raised a guidelines-scoring issue

at or before sentencing or at least showed that an error in the scoring of the guidelines would have changed the minimum sentence range utilized by the trial court. See MCL 769.34(10); MCR 6.425(E)(2)(c); MCR 6.429(C); *People v Kimble*, 252 Mich App 269, 276-277 n 5; 651 NW2d 798 (2002), lv gtd 468 Mich 870 (2003). Defendant failed to file a motion to withdraw his plea or for resentencing within the twelve-month period for seeking delayed leave to appeal, MCR 7.205(F)(4), and did not seek leave to appeal the trial court's ruling on the request for transcripts until after that twelve-month period had expired. Because defendant is no longer entitled to seek leave to appeal his conviction and sentence, the purpose for which the transcripts were requested no longer exists and defendant's appeal is thus moot. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood